

PROPOSED RESOLUTION

Resolution W-5048
DWA

AGENDA ID #14045

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DIVISION OF WATER AND AUDITS
Water and Sewer Advisory Branch

RESOLUTION W-5048
June 25, 2015

RESOLUTION

(RES. W-5048) RESOLUTION GRANTING BENBOW WATER COMPANY AUTHORIZATION TO ENTER INTO AN UNSECURED NOTE WITH WINSTON BENBOW, TO REPLACE A VOID UNSECURED NOTE EXECUTED WITHOUT PRIOR COMMISSION APPROVAL, THE PROCEEDS OF WHICH WERE USED FOR CONSTRUCTION OF A WATER STORAGE TANK AND TO PAY THE REMAINING INSTALLMENTS OF AN UNAUTHORIZED AUTO LOAN.

SUMMARY

This Resolution grants in part and denies in part, the authority requested by Benbow Water Company in its Advice Letter 40 filed on February 18, 2015.

By its filing, Benbow Water Company requests authority pursuant to §§ 816 through 851 of the Public Utilities Code, for the:¹

1. Long-term debt in the amount of \$85,000 entered into with Winston Benbow (previously the Estate of Vere B. Benbow, deceased) without the approval of the Commission.
2. Auto loan in the amount of \$35,000 entered into with the United Services Automobile Association Federal Savings Bank, also without the approval of the Commission.

Pursuant to § 825, unauthorized debt is void. However, § 825 provides that debt entered into in good faith, for value and without notice may not be rendered void.

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

PROPOSED RESOLUTION

Resolution W-5048
DWA

June 25, 2015

In this Resolution, Benbow Water Company is granted authority to:

1. Enter into an unsecured note with Winston Benbow for \$29,858, at 6.5% interest, with a term of 22 months.
2. Pay the remaining installments of Benbow Water Company's USAA Federal Savings Bank auto loan.

Notice of Advice Letter 40 was made by publication in the Commission's Daily Calendar of February 20, 2015. No protests have been received.

PARTIAL DENIAL OF ADVICE LETTER

Benbow Water Company is in violation of the provisions of § 825 for its failure to secure Commission authorization prior to incurring the indebtedness that it seeks in this filing. We cannot grant a retroactive approval.

BACKGROUND

Benbow Water Company (BWC), an S corporation, is a Class D water utility subject to the jurisdiction of this Commission.² BWC operates the water system in Benbow and vicinity, located approximately three miles south of Garberville, Humboldt County. In 2013, the water system served 119 active metered customers. Winston Benbow is the President and principal stockholder of BWC.

² BWC was previously a sole proprietorship owned by Mrs. Vere Benbow. Winston Benbow became the owner due to the demise of Mrs. Benbow.

PROPOSED RESOLUTION

Resolution W-5048
DWA

June 25, 2015

Pursuant to its Year 2014 Annual Report, BWC reported that it generated total operating revenues of \$214,465 and a net income of \$45,856. BWC's balance sheet is summarized and shown in the following table:

Table 1
Balance Sheet
As of 12/31/14

<u>Assets</u>	<u>Amount</u>
Net Utility Plant	\$454,617
Current Assets	<u>193,390</u>
Total Assets	<u>\$648,007</u>
<u>Liabilities & Equity</u>	
Common Stock	\$ 0
Other Paid-in Capital	0
Retained Earnings	491,964
Proprietary Capital	53,542
Long-Term Debt	45,851
Current Liabilities	29,012
Taxes Accrued	12,638
Other Current Liabilities	15,000
Net Contributions in Aid of Construction	<u>0</u>
Total Liabilities & Equity	<u>\$648,007</u>

BWC's capital structure, as of December 31, 2014 consisted of 46.13% debt and 53.87% equity. Capital structures are normally subject to review in cost of capital or general rate case proceedings. We will not make a finding in this Resolution on the reasonableness of BWC's capital structure for ratemaking purposes.

A. Loan from Owner

On August 31, 2003, BWC procured an \$85,000 unsecured loan from Vere B. Benbow, for a period of 120 months, with a 9.5% interest rate. The last payment was scheduled for August 1, 2013, but the loan was placed in abeyance on November 1, 2011. BWC did not secure approval from the Commission for this long-term debt. BWC indicates in its filing that as of January 1, 2015, the outstanding balance of the loan is \$29,858 and the loan has been transferred from the Estate of Vere B. Benbow (deceased) to Winston Benbow. The remaining term of the loan is 22 months.

PROPOSED RESOLUTION

Resolution W-5048
DWA

June 25, 2015

BWC asserts that it used the proceeds from the \$85,000 loan for the construction of a 105,000 gallon bolted steel tank (Zone 1 tank) and other associated facilities such as controls, telemetry, etc. that became used and useful as of June 12, 2003. BWC claims that all of the financial and construction data for the Zone 1 tank was submitted and reviewed by the Division of Water and Audits (DWA) as part of its 2003 general rate case (GRC).

In Resolution (Res.) W-4420, dated September 4, 2003, the Commission granted BWC a general rate increase in gross annual revenues of \$26,633 over revenues at present rates of \$125,464 or 21.2%. This increase provided a 12.9% rate of return on a rate base of \$346,087.

Res. W-4220 stated that BWC's water system is sectioned into three zones: Zone 1 is located at the lowest elevation and has a new 100,000-gallon tank³ that went on line as the primary Zone 1 storage on June 12, 2003; Zone 2 is located at an elevation of approximately 900 feet and has a 6,000-gallon redwood storage tank that serve approximately three customers; and Zone 3 is located at the highest elevation of about 1,200 feet and has two 6,000-gallon polyethylene storage tanks which were installed in 2001. In addition, Res. W-4220 pointed out that BWC has made many system improvements during 2003, that included the 100,000-gallon bolted steel tank at a cost of \$75,000 and that DWA reviewed the additions to the system since BWC's last GRC and found them to be reasonable.

B. Auto Loan

On April 5, 2012, BWC procured an installment loan for \$35,000 from the United Services Automobile Association (USAA) for a period of 60 months, with a 2.7% interest rate. The last payment is scheduled for April 1, 2017.

The loan was used to purchase a 2012 Jeep Grand Cherokee for use by BWC personnel. As of January 1, 2015, the outstanding balance of the loan was \$16,330.37.

³ BWC confirmed that the tank installed in Zone 1 is actually a 105,000-gallon bolted steel tank.

PROPOSED RESOLUTION

Resolution W-5048
DWA

June 25, 2015

NOTICE AND PROTESTS

Pursuant to General Order (G.O.) 96-B, Water Industry Rule 4.1, on February 18, 2015, BWC served its Advice Letter (AL) 40 on its service list. Notice of AL 40 was made by publication in the Commission's Daily Calendar of February 20, 2015. No protests have been received.

DISCUSSION

Pursuant to § 818, a public utility may not issue bonds, notes, or other evidences of indebtedness, payable at periods of more than 12 months, unless, in addition to the other requirements of law, it shall first have secured from the Commission, an order authorizing the issue.

A. Loan from Owner

When BWC entered into the loan with its then owner, Vere B. Benbow, BWC violated Public Utilities (P.U.) Code § 818 and the offending transaction is thereby void under § 825, which states in part:

All stock and every stock certificate or other evidence of interest or ownership, and every bond, note, or other evidence of indebtedness, of a public utility, issued without an order of the commission authorizing the issue thereof then in effect or not conforming in its provisions to any of the provisions which it is required by the order of authorization to contain, is void.

The Commission has no power to validate debt which, under the P.U. Code is *void ab initio*. A debt for which the Commission's authorization is necessary is void unless such authorization has been secured, and the Commission has no power to make valid an act which is void.

However, the Commission may direct the cancellation of such debt issued without authority and authorize the execution of new debt instrument in lieu thereof.

BWC used the proceeds of the unauthorized debt to construct a 105,000-gallon bolted steel tank and other associated facilities, which is an allowable purpose for issuing debt under § 817. In addition, BWC's construction project was in the public interest because

PROPOSED RESOLUTION

Resolution W-5048
DWA

June 25, 2015

it was an improvement of its service. Lastly, Res. W-4220 has determined that the additions to BWC's water system since BWC's last GRC were reasonable and recognized as used and useful.

While we are concerned when a utility executes debt without first obtaining Commission authorization as the P.U. Code requires, we do recognize that by its filing, BWC wishes to rectify its omission. Because BWC used the proceeds for proper purposes, we will require BWC to execute a replacement promissory note and we will not require BWC's owners to return the payments and interest BWC has already paid on the unauthorized debt.

The outstanding balance of \$29,858 will be the principal amount for the unsecured replacement note and the term will be for 22 months. For purposes of BWC's replacement promissory note, we will authorize a 6.5% interest rate in lieu of the unauthorized 9.5% interest rate. This rate was recently authorized for a water utility loan with a bank, and interest rates have generally remained constant since the 6.5% rate was authorized.⁴

B. Auto Loan

In addition to the part of § 825 indicated above, § 825 further states:

No failure in any other respect to comply with the terms or conditions of the order of authorization of the Commission shall render void any stock or stock certificate or other evidence of interest or ownership, or any bond, note, or other evidence of indebtedness, except as to a corporation or person taking it otherwise than in good faith and for value and without actual notice.

Purchasing a vehicle is a proper purpose for loan proceeds per § 817. Since the USAA entered into the loan in good faith, for value and without notice, we will authorize BWC

⁴ In Res. W-4886 dated October 20, 2011, the Commission authorized Lukins Brothers Water Company (LBWC) authority to borrow \$2,000,000 from Plumas Bank at 6.5% interest rate for a term of 20 years. In Res. W-4970 dated January 16, 2014, the Commission granted LBWC's request for an additional \$110,000 loan from Plumas Bank at an interest rate of 6.5%.

PROPOSED RESOLUTION

Resolution W-5048
DWA

June 25, 2015

to continue paying the remaining balance of the loan. The final installment is scheduled for April 1, 2017.

BWC is put on notice by this Resolution that the Commission does not permit a utility, either through carelessness or design, to disobey the provisions of the P.U. Code and Commission orders, either in letter or in spirit. We remind BWC of the provisions of § 827, which state:

Every officer, agent or employee of a public utility, and every other person is guilty of a felony who does any of the following acts:

- a) Knowingly authorizes, directs, aids in, issues, or executes, or causes to be issued or executed, any stock or stock certificate or other evidence of interest or ownership, or bond, note, or other evidence of indebtedness, in nonconformity with the order of the Commission authorizing the issue, or contrary to the provisions of this part or of the Constitution of this State.
- b) Knowingly makes any false statement or representation in any proceeding before the Commission or with knowledge of its falsity files or causes to be filed with the Commission any false statement or representation which tends in any way to influence the Commission to make an order authorizing the issue of any stock or stock certificate or other evidence of interest or ownership or any bond, note, or other evidence of indebtedness, or which results in procuring from the Commission the making of any such order.
- c) With Knowledge that any false statement or representation was made to the Commission, in any proceeding, tending in any way to influence the Commission to make such order, issues or executes or negotiates, or causes to be issued, executed, or negotiated any such stock or stock certificate or other evidence of interest or ownership, or bond, note, or other evidence of indebtedness.
- d) Directly or indirectly, knowingly applies, or causes or assists to be applied any part of the proceeds from the sale of any stock or stock certificate or other evidence of interest or ownership, or bond, note, or other evidence of indebtedness, to any purpose not specified in the Commission's order, or to any purpose specified in the Commission's order in excess of the amount authorized for such purpose.
- e) With knowledge that any stock or stock certificate or other evidence of interest or ownership, or bond, note, or other evidence of

PROPOSED RESOLUTION

Resolution W-5048
DWA

June 25, 2015

indebtedness, has been issued or executed in violation of any of the provisions of this part, negotiates, or causes the same to be negotiated.

PENALTY

Per § 826, every public utility that issues note or other evidence of indebtedness contrary to the provisions of the Stocks and Security Transactions, is subject to a penalty of not less than five hundred dollars (\$500), nor more than twenty thousand dollars (\$20,000) for each offense. Although we may fine BWC for the violation pursuant to § 818, we decline to do so. BWC's violation of § 818 does not appear to have caused any physical or economic harm to others. It also appears that BWC did not benefit materially from its unlawful conduct. We emphasize that our decision to not penalize BWC is based on the unique facts and circumstances before us in this matter. We will impose fines for violations of § 818 in other proceedings if the facts so warrant.

FEES

Whenever the Commission authorizes a utility to issue debt, the Commission is required to charge and collect a fee in accordance with § 1904(b). The fee for this financing authority as required by § 1904(b) is \$92.⁵ BWC must issue the check payable to the California Public Utilities Commission and remit the payment to the Commission's Fiscal Office.

SAFETY

In this filing, BWC requests authority for loans previously procured without Commission authorization. Since the Zone 1 tank had been reviewed in BWC's 2003 GRC and the auto loan proceeds were used for proper purposes, there isn't any safety implications associated with AL 40.

⁵ The loan amount subject to the fee is \$29,858. Although BWC is not entering into a new auto loan contract, we are treating the \$16,330 remaining balance that we are authorizing on a going forward basis, as a new loan. The fee is determined as follows: $(\$2 \times (29,858 + 16,330/1,000)) = \92 .

PROPOSED RESOLUTION

Resolution W-5048
DWA

June 25, 2015

Res. W-4420 indicated that BWC does not have any outstanding Commission orders requiring system improvements. BWC has been filing annual reports as required and the utility meets all applicable water quality standards.

COMMENTS

Section 311(g) (1) generally requires that draft resolutions be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission.

BWC has informed DWA's Utility Audit, Finance and Compliance Branch (UAFCB) that it has no objection to the required execution and issuance of a new debt instrument at 6.5% interest rate to replace the unauthorized debt, and that it is waiving its right to the 30-day public review and comment period.

There were no protests or concerns received from the parties on the service list of AL 40.

Accordingly, pursuant to § 311(g) (2), the otherwise applicable 30-day period for public review and comment is being waived.

FINDINGS

1. BWC is a Class D water utility subject to the jurisdiction of this Commission.
2. On September 1, 2003, BWC executed an unsecured note with Vere B. Benbow without the authorization of the Commission.
3. On April 5, 2012, BWC secured a loan from USAA without the authorization of the Commission.
4. BWC is presently carrying unauthorized debt obligations, and by its filing requests to rectify its omission.
5. The Commission does not by this Resolution determine that BWC's capital structure, cost of debt, interest expense, or expenditures is necessary or reasonable for ratemaking purposes. These issues are normally addressed in a general rate case.

PROPOSED RESOLUTION

Resolution W-5048
DWA

June 25, 2015

CONCLUSIONS OF LAW

1. BWC has violated § 825 and the debt instruments executed without prior Commission authorization is void. Retroactive approval of the unauthorized debts cannot be granted.
2. The execution and issuance of a new debt instrument to replace the Vere B. Benbow note would not be adverse to the public interest.
3. BWC should be authorized to enter into a \$29,858 loan with Winston Benbow, with a term of 22 months, at 6.5% interest.
4. It would not be adverse to the public interest to approve the remaining installments on the USAA auto loan.
5. Because USAA entered into the loan in good faith, for value and without notice, the Commission should authorize the auto loan on a prospective basis.
6. It is BWC's responsibility to abide by and comply with any applicable requirements regarding debt and security transactions.
7. There is no known opposition, and there is no reason to delay granting the authority requested.

PROPOSED RESOLUTION

Resolution W-5048
DWA

June 25, 2015

THEREFORE IT IS ORDERED THAT:

1. Benbow Water Company is authorized to execute an unsecured loan contract with Winston Benbow, for \$29,858, at 6.5% interest, over 22 months.
2. Benbow Water Company shall file with the Division of Water and Audits a copy of the loan document within 15 days of execution, and not later than 60 days from the effective date of this Resolution.
3. Benbow Water Company is authorized to pay the remaining installments of its auto loan with the USAA Federal Savings Bank.
4. Pursuant to Public Utilities Code § 1904(b), Benbow Water Company shall pay the fee of \$92 within fifteen (15) days of the effective date of this Resolution. Benbow Water Company must issue the check payable to the California Public Utilities Commission and remit the payment to the Commission's Fiscal Office.

This Resolution is effective today.

I certify that the foregoing Resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on June 25, 2015; the following Commissioners voting favorably thereon:

TIMOTHY J. SULLIVAN
Executive Director

Benbow Water Company
Advice Letter 40
Service List

Redway Community Service District
Attn: Ken Dean
153 Empire Avenue
Redway, CA 95560

Garberville Services District
Attn: Mark Bryant
919 Redwood Dr.
Garberville, CA 95542

State Water Board Drinking Water Program
Attn: Ronnean Lund
415 Knollcrest Drive, Suite 110
Redding, CA 96002